



# CITY OF LEMON GROVE

## CITY COUNCIL STAFF REPORT

**Item No. 1.E**

**Meeting Date:** January 15, 2019

**Submitted to:** Honorable Mayor and Members of the City Council

**Department:** Development Services Department

**Staff Contact:** Mike Viglione, Associate Planner

[mviglione@lemongrove.ca.gov](mailto:mviglione@lemongrove.ca.gov)

**Item Title:** Seventh Amendment to Option Agreement Between City of Lemon Grove and the San Diego Community Land Trust

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**Recommended Action:** Adopt a resolution amending the Option Agreement to provide a six-month time extension and allow for revision of the accepted ground lease.

### **Summary:**

In September 2014, the City and San Diego Community Land Trust (SDCLT) entered into a Purchase Option Agreement for the eventual sale of 8084 Lemon Grove Way which is Lemon Grove Housing Authority owned land. The Purchase Option Agreement requires SDCLT to complete milestones by specified dates to ensure that SDCLT progresses towards purchase of 8084 Lemon Grove Way. The final project milestone—securing building and site improvement permits and securing, as to form, the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests—was to be completed by May 19, 2016, and the Sixth Option Amendment extended this date to January 31, 2019. The ground lease was accepted on October 17, 2017 but standards for common area maintenance and provisions to ensure its adequate funding were inadvertently omitted. A further time extension will allow for the correction of the ground lease and finalization of the permits required by the ultimate milestone.

### **Discussion:**

On September 22, 2014, the City and San Diego Community Land Trust (SDCLT) entered into a Purchase Option Agreement for the eventual sale of 8084 Lemon Grove Way which is owned by the Lemon Grove Housing Authority (City Council Resolution No. 2014-3284 dated September 16, 2014). A nine unit housing development is currently entitled on the subject property based on approvals in 2007 and amendments approved on March 1, 2016. The Purchase Option Agreement allows SDCLT to purchase the property for one dollar per unit in exchange for constructing the units and restricting them to moderate income households via their 99-year ground lease mechanism. The Purchase Option

*Seventh Amendment*

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Agreement requires SDCLT to achieve certain milestones by specified dates to ensure SDCLT has done their due diligence to determine whether the project is feasible.

The first milestone—submission of a business plan—was to be achieved by December 2014. The business plan was submitted on December 1, 2014, and the City Council reviewed the business plan and provided feedback to SDCLT on January 6, 2015.

The second milestone—securing entitlements and construction financing—was to be achieved by September 2, 2015, and October 19, 2015, respectively. Minimal revisions to the approved Tentative Map (TM0052) and Planned Development Permit (PDP06-09) were proposed and amendments to the floor and elevation plans were approved by the City Council on March 1, 2016. Entitlements for both the tentative map and planned development permit are secured since there has been substantial progress towards the issuance of a final map, grading plan, improvement plan and building permits for the completion of the project. While the first three amendments extended the deadline to provide evidence of construction financing, the fourth amendment approved on October 17, 2017, revised the second milestone to allow SDCLT to secure financing a minimum of 10 days prior to exercising the option.

The third milestone—submission of building and site improvement applications—was to be achieved by April 4, 2016. This milestone required submission of development plans and technical studies required for a grading permit, building permit, landscape permit, and a final map. Appropriate plans and reports include building and site construction plans, grading plans, a landscape documentation package, an acoustical analysis, a Storm Water Quality Management Plan and a hydrology report, and potentially other necessary reports, studies, and plans in accordance with City Council Resolutions 2694 and 2695, which approved TM0052 and PDP06-09 respectively. In addition, a “Hold Harmless” agreement was required for each submittal. In February of 2016, SDCLT submitted the necessary permit applications achieving the third milestone.

The fourth milestone—securing building and site improvement permits and securing approval as to form of the 99-year ground lease proposed to be used as the conveyance of Affordable Unit interests—was originally to be achieved by May 19, 2016 but subsequent amendments to the Purchase Option Agreement extended the deadline to January 31, 2019. The fourth milestone requires that the permits applied for in the third milestone be issued and improvements secured either through a bond or cash deposit with appropriate fees paid prior to transfer of the Property.

Staff is currently reviewing a December 2018 resubmittal of the Grading and Improvement Plans and Final Map required for the satisfaction of the fourth milestone. At the outset of this review however, it was learned that standards for common area maintenance and its funding were inadvertently omitted from the ground lease approved

by the City Council on October 17, 2017. Such standards ensure residents are adequately notified of their obligations under the lease agreement and thus their inclusion in the ground lease warrants further consideration to ensure the fourth milestone is wholly complete. Amending the ground lease to include these provisions would require further City Council action which can only be accommodated with an additional time extension. City staff estimates that the review and remediation of the ground lease, and finalization of the building and engineering permits required by the fourth milestone can be completed within six months.

Accordingly, the proposed Seventh Amendment to the Option Agreement Between City of Lemon Grove and San Diego Community Land Trust extends the deadline for the fourth milestone to June 31, 2019 and extends the Option Term to September 22, 2019. The proposed amendment also includes an acknowledgment of the ground lease revisions and reserves the City's right to review and approve or disapprove said revisions.

Should the City Council decide to take no action and/or decline to amend the Option Agreement, it is likely the Option Agreement will terminate on January 31, 2019 due to nonfulfillment of the fourth milestone. As a consequence, the developer would need to renegotiate a new Option Agreement with the City should they continue to pursue the project. At that time, the City Council may choose to pursue other opportunities for the property if this Option Agreement in fact does terminate.

**Environmental Review:**

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|--|---|
| <input checked="" type="checkbox"/> Not subject to review              | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section [            ] | <input type="checkbox"/> Mitigated Negative Declaration |

**Fiscal Impact:** None.

**Public Notification:** None.

**Attachments:**

**Attachment A** – Resolution Amending the Option Agreement



**RESOLUTION NO. 2019-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE,  
CALIFORNIA, APPROVING THE SEVENTH AMENDMENT TO AN OPTION  
AGREEMENT WITH THE SAN DIEGO COMMUNITY LAND TRUST FOR THE  
PARCEL IDENTIFIED AS 8084 LEMON GROVE WAY (475-450-19-00)**

**WHEREAS**, on June 20, 2006, and June 19, 2007, the former Lemon Grove Community Development Agency and a developer entered into loan agreements for the development of nine townhome units at 8084 Lemon Grove Way; and

**WHEREAS**, said developer defaulted on the loan agreements, resulting in the parcel identified as 8084 Lemon Grove Way becoming property of the City of Lemon Grove; and

**WHEREAS**, in 2014, the San Diego Community Land Trust provided a formal offer to purchase 8084 Lemon Grove Way from the City of Lemon Grove; and

**WHEREAS**, the San Diego Community Land Trust's offer included a commitment to develop and construct a minimum of nine affordable housing units to be ground leased for a 99-year period to households earning from 80 percent to 120 percent of the San Diego Area Median Income at the time of sale or resale; and

**WHEREAS**, on June 17, 2014, the City Council directed City staff to negotiate purchase agreements with the San Diego Community Land Trust, based on its offer; and

**WHEREAS**, on May 17, 2016, the City Council approved an amendment to the Option Agreement with the San Diego Community Land Trust extending the expiration date of Option Agreement milestone 7.4 to October 19, 2016 and the option term to March 22, 2017 (both six month extensions) and including an Optionee requirement to execute an Affordable Housing Agreement and Regulatory Agreement and a Notice of Affordability Restrictions on Transfer of Property; and

**WHEREAS**, the City negotiated a second amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to April 19, 2017, and the option term to September 22, 2017 (both six month extensions); and

**WHEREAS**, the City negotiated a third amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to October 19, 2017, and the option term to March 22, 2018 (both six month extensions) and requiring milestone 7.2 – secure construction financing – to be completed by July 19, 2017; and

**WHEREAS**, the City negotiated a fourth amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to April 19, 2018, and the option term to September 22, 2018 (both six month extensions) requiring milestone 7.2 – secure construction financing – to be completed a minimum of 10 days prior to the execution of the option; and accepted the form of Ground lease, Ground Lease Rider and Regulatory Agreement; and

**WHEREAS**, the City negotiated a fifth amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to October 19, 2018 and the option term to March 22, 2019 (both six month extensions); and

**WHEREAS**, the City negotiated a sixth amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to January 31, 2019; and

**WHEREAS**, the City has negotiated a seventh amendment to the Option Agreement with the San Diego Community Land Trust further extending the expiration date of milestone 7.4 to June 31, 2019 and the option term to September 22, 2019 and providing for the right to review and modify the accepted ground lease used as the conveyance of Affordable Unit interests; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Lemon Grove, California hereby:

1. Approves a Seventh Amendment to the Option Agreement (Exhibit A) between the City of Lemon Grove and the San Diego Community Land Trust; and
2. Authorizes the City Manager to execute said Amendment and related documents reasonably necessary for fulfilling the terms of the Option Agreement, as amended, subject to minor modifications.

**PASSED AND ADOPTED** on \_\_\_\_\_, 2019, the City Council of the City of Lemon Grove, California, adopted Resolution No. \_\_\_\_\_, passed by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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**Racquel Vasquez, Mayor**

**Attest:**

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**Shelley Chapel, MMC, City Clerk**

**Approved as to Form:**

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**Kristen Steinke, City Attorney**

**EXHIBIT A (PAGES 8 THROUGH 9)**  
**SEVENTH AMENDMENT TO OPTION AGREEMENT**

This Seventh Amendment to Option Agreement (“**Seventh Amendment**”) is entered into as of January \_\_, 2019, by and between and between THE CITY OF LEMON GROVE a public body (“**Optionor**”) and THE SAN DIEGO COMMUNITY LAND TRUST a California 501(c)(3) non-profit organization (“**Optionee**”),

**RECITALS:**

A. Optionor and Optionee entered into that certain Option Agreement dated September 22, 2014 relating to the Property commonly known as 8084 Lemon Grove Way, Lemon Grove, CA (APN 475-450-19-00), as amended by the First Amendment dated March 18, 2016, as amended by the Second Amendment dated October 5, 2016, as amended by the Third Amendment dated April 17, 2017, as amended by the Fourth Amendment dated October 18, 2017, as amended by the Fifth Amendment dated April 18, 2018, and as amended by the Sixth Amendment dated October 18, 2018 (together the “**Option Agreement**”).

B. Optionor and Optionee desire to further amend the Option Agreement set forth herein. All initially capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Option Agreement.

**AGREEMENT:**

NOW THEREFORE, and in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee hereby agree as follows:

1. **Extension of Option Term.** Paragraph 4 of the Option Agreement is deleted in its entirety and replaced as follows:

“**4. Option Term.** The Option may be exercised upon the Effective Date and no later than September 22, 2019 (the “**Option Term**”), unless terminated earlier under the terms of Section 6. If the Option is not exercised in accordance with the provisions and conditions hereof during the Option Term, then the Option shall expire and the parties shall have no further obligations under this Agreement with the exception of any surviving indemnification obligations as provided in this Agreement.”

2. **Extension of deadline for Permits and Optionor’s Approval.** Subparagraph 7.4 of the Option Agreement is deleted in its entirety and replaced as follows:

“7.4 No later than June 31, 2019, Optionee shall have (i) completed all requirements necessary for Building and Site Improvement Permits (including building, street improvement, and grading plans shall be issued and the final map approved by City Council), with the exception of payment of fees for the foregoing permits and plans (“Permit Fees”). All outstanding Permit Fees shall be delivered to Escrow prior to the transfer of the Property to Optionee and shall be a Developer (Optionee) deliverable under section 2.6 of the revised Real Estate Purchase and Sale Agreement (“PSA”), as attached to the Fourth Amendment as Fourth Amendment Exhibit A.”



3. Acceptance of Revised Ground Lease. As of the date of this Seventh Amendment, Optionor acknowledges that the form of the 99 year ground lease previously accepted by Optionor under the Fourth Amendment which is proposed to be used as the conveyance of the Affordable Housing Unit interests, has been revised to provide for Common Area Fees to be paid by Homeowner ground lessees for the maintenance of Common Areas. Prior to Optionee's exercise of its Option, Optionor reserves the right to review and either approve or disapprove the terms of the revised Ground Lease.

4. Counterparts. This Seventh Amendment may be signed in multiple counterparts with the same force and effect as if all original signatures appeared on one copy; and in the event, this Seventh Amendment is signed in counterparts, each counterpart shall be deemed an original and all of the counterparts shall be deemed to be one Seventh Amendment.

5. Effect of Seventh Amendment. Except as amended hereby, the Option Agreement remains in full force and effect.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Seventh Amendment as of the date set forth above.

**OPTIONOR:**

THE CITY OF LEMON GROVE,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to legal form:

By \_\_\_\_\_  
Kristen S. Steinke, City Attorney

**OPTIONEE:**

THE SAN DIEGO COMMUNITY LAND TRUST,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_